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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,113	09/18/2006	Gil Naor	P-70415-US	9381
49443	7590	05/11/2010	EXAMINER	
Pearl Cohen Zedek Latzer, LLP			BLATT, ERIC D	
1500 Broadway			ART UNIT	PAPER NUMBER
12th Floor			3734	
New York, NY 10036				

  

MAIL DATE	DELIVERY MODE
05/11/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/593,113	NAOR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric Blatt	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 February 2010.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 10-24 and 26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 10-24 and 26 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2-3-2010 has been entered.

### ***Claim Objections***

Claim 17 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 contains a recitation regarding a decreasing width along the diverter section. This feature appears to have been previously recited in claim 14, from which claim 17 depends.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 14, from which claim 24 depends, recites a diverter section having a free end, wherein the diverter section tapers in width toward its free end. Claim 24 recites that the diverter section is secured between first and second anchoring sections. The original specification fails to disclose an embodiment having both of these features. It appears that claim 14 was originally intended to be generic to all of the disclosed embodiments while claim 24 was intended to be specific to the embodiment shown in Figures 11-13. In the most recent amendment, Applicant appears to have directed independent claim more specifically to the embodiments shown in Figures 1-4, and adding features to the independent claim which are mutually exclusive with the features recited in claim 24.

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As discussed above, the specification does fails to enable this claim combination which appears to combine mutually exclusive elements from different embodiments.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yassour et al. (US 6,348,063).

Yassour discloses an implant device (Figure 5) for implantation in the cardiovascular system of a subject to divert emboli flowing through a vessel from entering a branch vessel. The device comprises a stent having an anchoring section 90 and a diverter section (the open portion extending out from the closed-loop cylindrical anchoring section 90 is considered to comprise the claimed diverter section). The diverter section is integrally formed with the anchoring section and has a free end that can project into an aortic arch at the upstream side of the branch blood vessel. The diverter section decreases in width toward its free end. The diverter section is constructed to permit flow of blood through the aortic arch and includes an outer surface that is effective to divert emboli in the blood from entering the carotid artery. The diverter section is formed as a porous open braided structure, and the anchoring section is also formed of open braided material having a strands of a different diameter than those of the diverter section. (Col. 7, Lines 11-29, Col. 8, Lines 2-22) The diverter section is in the form of a curved planar sheet and its outer surface has a convex configuration. The diverter section has a rounded shape. Said shape may be

considered bulbous. The device is capable of being positioned in an aortic arch such that an end extends toward the center of the aortic arch. As seen in Figure 5, the diverter section may be angled somewhat relative to the anchoring section 90. Thus, it is capable of being angled away from the anchoring section in the downstream direction of blood flow when the device is implanted in the branch blood vessel.

### ***Response to Arguments***

Applicant's arguments with respect to claims 14-23 and 26 have been considered but are not persuasive.

Only Applicant's arguments with respect to the embodiment shown in Figure 5 of Yassour are relevant to the present rejection. Applicant submits that the claimed invention distinguishes over the embodiment shown in Figure 5 of Yassour since said embodiment does not include a diverter section having a free end as recited in claim 14. In response, Examiner believes Applicant has read the term 'diverter section' too narrowly, applying it exclusively to the circular member 98 shown in the figure. By contrast, this recitation may be more broadly read to include the entirety of the open portion extending outwardly from the closed-loop cylindrical anchoring section. This diverter section would include element 98 as well as the structure surrounding it. Upon this interpretation, the diverter section clearly comprises the claimed free end.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. B./  
Examiner, Art Unit 3734

/TODD E. MANAHAN/  
Supervisory Patent Examiner, Art Unit 3734